

ATTACHMENT 5

NVIDIA's Proposed Redactions to Fleury Declaration (Underlined in Red)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORP.

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-2880

**DECLARATION OF JENNIFER FLEURY
IN SUPPORT OF PLAINTIFF FEDERAL
TRADE COMMISSION'S EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER PURSUANT TO
FEDERAL TRADE COMMISSION ACT §
13(B)**

**REDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED**

DECLARATION OF JENNIFER FLEURY

I, Jennifer Fleury, declare as follows:

1. I am one of the attorneys representing Plaintiff Federal Trade Commission (the “FTC” or “Commission”) in the above-captioned action against Defendants Microsoft Corporation (“Microsoft”) and Activision Blizzard, Inc. (“Activision”).

2. I submit this declaration in support of Plaintiff FTC’s Emergency Motion for a Temporary Restraining Order Pursuant to Federal Trade Commission Act § 13(b) in the above-captioned action. I have personal knowledge of the facts stated herein and could and would competently testify thereto if called as a witness.

3. Attached as Exhibit A is a true and correct copy of an excerpt of the transcript of the investigational hearing of [REDACTED] dated October 11, 2022.

4. Attached as Exhibit B is a true and correct copy of an excerpt of the transcript of the deposition of [REDACTED] dated March 8, 2022.

5. Attached as Exhibit C is a true and correct copy of the Expert Report of Dr. Robin S. Lee, Ph. D., dated May 26, 2023, which was served in *In re Microsoft Corp. & Activision Blizzard, Inc.*, Docket No. 9412 (FTC).

6. Attached as Exhibit D is a true and correct copy of an MLex article dated June 1, 2023, titled “Microsoft is exploring options to close Activision deal despite UK block.”

7. Attached as Exhibit E is a true and correct copy of a Summary of Application for Microsoft’s appeal of the UK CMA’s April 26, 2023 findings.

8. Attached as Exhibit F are true and correct copies of the January 4, 2023 Scheduling Order and the May 12, 2023 Order Granting Joint Motion for the First Revised Scheduling Order entered in *In re Microsoft Corp. & Activision Blizzard, Inc.*, Docket No. 9412 (FTC).

9. Attached as Exhibit G are true and correct copies of the May 5, 2023 UK CMA Interim Order on the anticipated acquisition by Microsoft Corporation of Activision Blizzard, Inc.; May 18, 2023 Notice of the proposed Final Order on the anticipated acquisition by

Microsoft Corporation of Activision Blizzard, Inc.; May 18, 2023 Draft Microsoft and Activision Merger Inquiry Order; and the April 26, 2023 UK CMA Final Report on the Anticipated Acquisition by Microsoft, May 5, 2023.

10. Attached as Exhibit H is a true and correct copy of a Bloomberg article dated June 2, 2023, titled “Microsoft’s Smith Set for Talks With UK Chancellor Over Activision Deal Ban.”

11. Attached as Exhibit I is a true and correct copy of Complaint Counsel’s Final Proposed Exhibit List, dated May 19, 2023, *In re Microsoft Corp. & Activision Blizzard, Inc.*, Docket No. 9412 (FTC).

12. Attached as Exhibit J is a true and correct copy of an excerpt of the transcript of the deposition of [REDACTED] [REDACTED] dated April 7, 2023.

13. Attached as Exhibit K is a true and correct copy of a document produced by Microsoft during the Commission’s investigation of Microsoft’s proposed acquisition of Activision, the first page of which bears Bates stamp MSFT-2R-08100157.

14. Attached as Exhibit L is a true and correct copy of an excerpt of the May 5, 2021, trial testimony of Microsoft executive Lori Wright in *Epic Games, Inc., v. Apple, Inc.*, No. C-20-5640 YGR (N.D. Cal.).

15. Attached as Exhibit M is a true and correct copy of [REDACTED] [REDACTED] dated December 2, 2022.

16. Attached as Exhibit N is a true and correct copy of an excerpt of the transcript of [REDACTED] dated April 14, 2023.

17. Attached as Exhibit O is a true and correct copy of an excerpt of the transcript of the deposition of [REDACTED] dated April 6, 2023.

1 18. Attached as Exhibit P is a true and correct copy of an excerpt of the transcript of
2 the investigational hearing of [REDACTED]
3 [REDACTED] dated September 23, 2022.

4 19. Attached as Exhibit Q is a true and correct copy of excerpts of the transcripts of
5 [REDACTED]
6 [REDACTED]

7
8 20. Attached as Exhibit R is a true and correct copy of an excerpt of the transcript of
9 the investigational hearing of [REDACTED] dated September 22, 2023.

10 21. Attached as Exhibit S is a true and correct copy of an excerpt of the transcript of
11 the deposition of [REDACTED]
12 dated March 23, 2023.

13 22. Attached as Exhibit T is a true and correct copy of [REDACTED]
14 [REDACTED]

15 23. Attached as Exhibit U is a true and correct copy of a document produced by
16 Microsoft during the Commission's investigation of Microsoft's proposed acquisition of
17 Activision, the first page of which bears Bates stamp MSFT-2R-01209234.

18 24. Attached as Exhibit V is a true and correct copy of a document produced by
19 Microsoft during the Commission's investigation of Microsoft's proposed acquisition of
20 Activision, the first page of which bears Bates stamp MSFT-2R-05713141.

21 25. Attached as Exhibit W is a true and correct copy of an excerpt of the transcript of
22 proceedings held on January 19, 2023 in *Demartini v. Microsoft Corp.*, No. C22-08991 JSC
23 (N.D. Cal.).

24 26. Attached as Exhibit X is a true and correct copy of an excerpt of the transcript of
25 the initial conference held on January 3, 2023, in *In re Microsoft Corp. & Activision Blizzard,*
26 *Inc.*, Docket No. 9412 (FTC).

27. Attached as Exhibit Y is a true and correct copy of a document produced by Microsoft during the Commission's investigation of Microsoft's proposed acquisition of Activision, the first page of which bears Bates stamp MSFT-2R-00529722.

28. Attached as Exhibit Z is a true and correct copy of email correspondence between the FTC and Defendants from May 24, 2023 to June 9, 2023.

29. Attached as Exhibit AA is a true and correct copy of a document produced by Microsoft during the Commission's investigation of Microsoft's proposed acquisition of Activision, the first page of which bears Bates stamp MSFT-2R-05727022.

30. Attached as Exhibit AB is a true and correct copy of a document produced by Microsoft during the Commission's investigation of Microsoft's proposed acquisition of Activision, the first page of which bears Bates stamp MSFT-2R-06118913.

31. Attached as Exhibit AC is a true and correct copy of a document produced by Microsoft during the Commission's investigation of Microsoft's proposed acquisition of Activision, the first page of which bears Bates stamp MSFT-2R-02083357

32. Attached as Exhibit AD is a true and correct copy of an excerpt of the transcript of the deposition of [REDACTED] dated March 28, 2023.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 12, 2023.

/s/ Jennifer Fleury
Jennifer Fleury

FILER'S ATTESTATION

I, James H. Weingarten, am the ECF User whose ID and password are being used to file this Declaration of Jennifer Fleury. In compliance with Civil Local Rule 5-1(h), I hereby attest that concurrence in the filing of this document has been obtained from the signatory.

By: /s/James H. Weingarten
James H. Weingarten